IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10878 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SPG ENTERPRISE THROUGH SOLE PROPRIETOR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10878 of 2004

MR NV SOLANKI for Petitioner No. 1

Mr.Siraj Gori, AGP. for Respondent Nos.1 & 2.

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 03/09/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

Leave to delete respondent No.3.

2. Rule. Mr.Siraj Gori, learned Assistant Government Pleader, appears and waives service of Rule on behalf of the respondents. At the request of the learned Counsel appearing for the parties, the matter is taken up for final disposal today.

3. This petition challenges the seizure of the petitioner's goods being cotton yarn which were valued at Rs.6,26,250/- on the date of seizure i.e. on 21/07/2004. In view of the nature of the controversy involved in the matter, it is not necessary to narrate the facts in detail.

4. According to the respondent-Sales-tax Authorities, there was an attempt on the part of the petitioner to evade payment of Central Sales-tax. The rate of Central Sales-tax is 8% and on the value of the goods in question (Rs.6,26,250/-), the amount of Sales-tax would be Rs.50,100/- and the petitioner would also be liable to pay 150% of the tax amount as penalty and, therefore, the total liability of the petitioner would be Rs.1,25,250/-.

5. According to the petitioner, the goods have remained in the custody of the respondents and have not been sold out of the State of Gujarat. The only case against the petitioner is that the goods were meant to be sold outside the State and if the purchaser does not supply 'C' form, then only the rate of tax would be 8% i.e. Rs.50,100/- otherwise the rate of tax would be 4%, i.e. Rs.25,000/- and if the goods are sold within the State of Gujarat, the tax liability would be only 4% i.e. Rs.25,000/-. It is, therefore, submitted that the petitioner cannot be held liable to deposit any amount other than Rs.25,000/-.

6. Having heard the learned Counsel for the parties, we do not propose to go into the merits of the controversy involved between the parties and we are of the view that, in the facts and circumstances of the case, the interests of justice would be served if the respondents are directed to release the goods on the petitioner depositing a sum of Rs.75,000/- with the respondent authorities, without prejudice to the rights and contentions of the petitioner in the proceedings, which may be initiated against the petitioner. If the petitioner co-operates in such proceedings, the same shall be completed within a period of two months from today and if the petitioner is entitled to refund of any amount, the respondents shall refund such amount to the petitioner within one month from the date of completion

of the proceedings.

7. Rule is made absolute to the aforesaid extent with no order as to costs.

Direct service is permitted.

(M.S.Shah, J)

(D.A.Mehta, J)

m.m.bhatt